

A SECOND
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LETTER

TO a GENTLEMAN of the
Long Robe in *Great-Britain*.

Wherein some of the
Late Illegal PROCEEDINGS
OF THE
BARONS of the *Exchequer*,
IN THE
Kingdom of *Ireland*, *Barons*
of the Exchequer
ARE

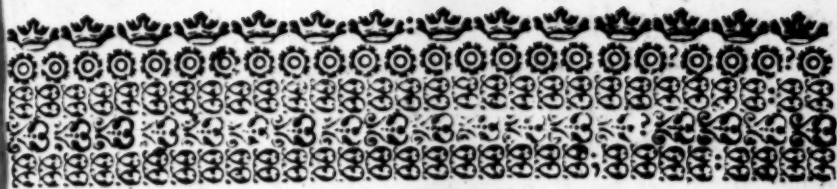
Plainly and impartially set forth.



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A SECOND
LETTER

TO a GENTLEMAN of the
LONG ROBE, &c.

S I R,

Dublin, February 13. 1719.

I Am astonished to find a Gentleman so long conversant in the Courts of Justice, and with so much Reputation, as you have been, should run in with an Opinion, that the Barons of the *Exchequer* in this Kingdom have done nothing contrary to the Law, or their Duty, in their late Proceedings in the Case between *Sherlock* and *Annesley*.

HOWEVER small my Knowledge in the Law may be ; yet I have often heard it, as a
A 2 Thing

Thing unquestioned. That every known Rule of Practice which is not in it self Arbitrary, but founded on Reason and Equity, and for Time immemorial, has constantly been observed and adher'd to in any Court of Justice, is looked upon as a LAW of the Court; and as such to be still observed by the Judges, and all the Practitioners of such Court, until, in a proper way, it be Repealed or Altered. And if any Judge shall knowingly and wilfully act contrary to any such Rule, before it be so altered or repealed, he is to be looked upon as a breaker of the Law, and acting contrary to his Duty.

THAT this is the universal Opinion of all Lawyers, and in it self highly rational, I need not go about to prove to you, who are much better acquainted with these Things than I can pretend to be: And if thus much be once allowed, it will be impossible for you, or any Man, to justify the abovementioned Proceedings of the Barons; of which, I think you will easily be Convinced, if, laying aside all manner of Prejudice, you but seriously consider that Part of the Representation of our House of Lords which particularly relates to this Matter.

BUT because I find that you, like others, have hastily run over that Representation, and resolve to condemn it without giving it a fair Tryal; I shall endeavour to set that part of it, which more immediately relates to the present Point, in a full and clear Light: And if I can convince you, that the Barons have knowingly and wilfully acted in direct opposition to several of the

the most known and establish'd Rules of Practice (and those founded on Reason and Equity which, time out of Mind, have been all along observed in their Court, and to this Day are neither repealed nor altered; I think you must needs allow, that they have acted contrary both to the Law and their Duty.

HAVING taken upon me to shew you, that the Barons have *knowingly* and *wilfully* acted against the established Rules of their Court; I shall first insist upon those Things of which we cannot suppose them to have had the least Doubt: And as to other Matters, wherein it may be allowed that possibly they were not fully informed, I shall make the proper use of them before I have done.

TO begin then (with the *Representation* for my guide) It has been the constant and received Practice in our Courts of Equity here, that no Copy of any Order of the House of Lords of England or Great-Britain, was ever to be allowed as Authentick, except it were proved by a Witness, *Viva voce*, upon Oath, to be a true Copy of the Original Order: Nor has it been known, from the first beginning of Appeals from hence to the Lords of England, that ever any such Copy (if contested) was received or allowed by the Court, until such Proof of it was first made. The Reason and Equity of this Rule of Practice will presently appear.

BUT in direct opposition to this Rule (never, that I can find, before varied from) the Barons
of

of the Exchequer, in the Cause between *Sherlock* and *Annesly*, took upon them to receive and allow of several *Copies of Orders*, or pretended *Orders*, from the *British House of Peers*, without any such Proof of their Agreement with the *Originals*, of which it was pretended that they were *Copies*.

IF the Barons, in all the Time they had sate upon that Bench, had not acquainted themselves with the received and established *Rules* of their own Court, I believe you will think that they are by no means fit to be Judges there: But if they knew these *Rules*, and yet varied from them (or indeed from any one of them) as far as they so varied, they are justly to be charged with having *knowingly* and *wilfully* acted contrary to the Law of their Court.

IN Answer to this, you offer two Things: *First*, That in the Courts of Equity in *Westminster-Hall*, a Copy of an *Order* of the House of Lords, if signed by the Clerk of the Parliament, is always allowed as Authentick, without farther Proof: And therefore, since Appeals from the Courts of Equity in *Ireland* to the *English* [and now *British*] House of Lords, have obtained, and are not disallowed of; what Reason can be given why greater Proof of the Truth of the Copy of an Order of that House should be required in the Courts in *Ireland*, than what always has been in those of *England*? To which I reply,

First, T H A T tho' no better Reason for this could be given; for the present it is Reason enough
for

for requiring such Proof as I have mentioned ; that hitherto it has always been required ; and no Copy of any such Order ever once, before this particular Case, has been admitted without it. As long as the grand Rules of Law and Equity are observed, it is no way absurd that particular Rules or Methods of Practice, may, in different Courts or Places, be different one from another : But where ever any such Rule has once fully obtained, it would be an unjust and arbitrary Act in any Judge (and consequently was so in our Barons) without the consent of both Parties, to vary from it, until the same were by competent Authority repeal'd or altered.

Secondly, BESIDES this, which alone were sufficient, there is an unanswerable Reason (and grounded upon the most evident Justice and Equity) why much greater Proof of such a Copy of an Order should be insisted upon in our Courts of Equity here, than what needs to be done in *Westminster Hall*. If in either of the Courts of Equity in *Westminster Hall* ; a Counterfeit or Falsified Order, as from the *British House of Lords*, should be produced ; The Party thereby aggrieved, may in an hours time, and with very small Expence, detect the Forgery, by only having recourse to the Clerk of the Parliament's Office, and from thence procuring a true Copy of such Order, or a Certificate that there is no such thing in the Journals of the House. But if any such forged Copy should be produced here, and no more proof required of it than what you say is done at *Westminster* : The Party injured may have Judgment both given and executed

executed against him, before (at this distance) he may be able (especially if the wind be contrary) to compass the like remedy. And therefore, when for want of Parliaments here, in the Reign of *King Charles the Second*, Appeals from our Courts of Equity, began to be carried to the House of Lords in *England*; It was wisely taken care of from the very beginning, by the Judges of those Courts, that no Copy of an Order from the *English* Lords, should ever be allowed as Authentick here, until its Agreement with the *Original*, was by a Credible Witness attested and proved in the Manner which I have but just now mentioned: Nor has this Rule ever once, that I can find, been departed from (except perhaps by the consent of both Parties) until the present Barons of our Exchequer have taken upon them to do it in this single Cause, that we are now taking notice of.

THE second Thing, which upon this Occasion, you offer, is, That at the several times when the *British* House of Lords made Orders in the Case of *Annesly* and *Sberlock*: They at the same time ordered the Lord High Chancellor of *Great-Britain* to Transmit such their Orders to the Barons of the Court of Exchequer in *Ireland*: And that in pursuance hereof, the several Lord Chancellors *Cowper* and *Parker* did (accordingly, as they were Ordered) in their several Letters by Post, transmit Copies of the said respective Orders, Signed by the Clerk of the Parliament to the Lord Chief Baron and the other Barons of the said Court, which Copies, altho' not proved upon Oath, were yet sufficiently Attested, not only by the hand of the Clerk

Clerk of the Parliament, but also by the respective Letters of the said Lord Chancellors ; And consequently, were a sufficient Warrant for the said Barons to Act as they did.

NOW the reply which I have just now given to your former Allegation, I take to be a sufficient return to this also. By the constant Practice of our Courts of Equity, from the very first beginning of Appeals from them to the House of Lords in England, no Copy of any Order of that Right Honourable House has ever until this time, been admitted or received as Authentick, in either of the said Courts, except the same were proved upon Oath, as I have already said. Upon this Rule thus constantly observed, the Parties Litigant depend, and rely upon having the Benefit of it, as much as of any other established Rule of Practice within the Courts : And therefore, as I have said, until this Rule (which is now become a Law of the said Courts) be by competent Authority repealed or altered ; it must be looked upon as Illegal and Arbitrary, and a grievance to the Subject for any Judge in either of the said Courts to accept of any other Proof of the Truth and Authentickness of any such Copy.

BUT, say you, the Lord Chancellor's Letter added to the Clerk of the Parliament's signing the Copy, is Proof sufficient. I answer, that however *sufficient* any Man in his *Private Thoughts*, may look upon such Proof to be ; yet still it is a sort of proof that is not Warranted by any *Law* or *Custom* ; and consequently, it is no *Legal* Proof, and therefore *not sufficient* for any Lord Chancellor or other Judge in Equity to found a *Decree* upon.

IT has always been the happiness of the People who live under the Laws of *England* (as we in *Ireland* have long done) that no Man is to be outed of his Possession without the intervention of an *Oath*, which is the most sacred tie upon the Conscience of Man. And if any Man, upon such an Occasion, forswears himself, there is some remedy to be had against him, which at least may serve to keep him in aw. But if this new Doctrine of yours be true; let a Man dexterously counterfeit a Letter from the Lord Chancellor of *Great-Britain*, and therein inclose a Copy in like manner counterfeited, of a pretended Order of the House of Lords there, and send the same by Post to the Lord Chief Baron and other Barons of the Exchequer in *Ireland*; by this means he must immediately obtain an *Injunction*, and thereby turn any Man out of his Possession, without any possibility of remedy to him, until he again recovers it with Charge and Trouble at *Law*; nor so much as the Satisfaction of Punishing the Villain who secretly put the Letter into the Post-Office, and can never be detected, except he will be such a Fool to discover himself.

I MIGHT, upon this Occasion ask whether the Word *Transmit*, in the two several Orders by their Lordships, given to the Lord Chancellor of *Great-Britain*, must be understood to signifie to send in a Post Letter; And how far a Post Letter, in such a Case as this, is by *Law* to be taken as Evidence, in order to turn any Man out of Possession? as also, whether it be not a Dangerous Precedent, and too great a Power given to the Lord Chancellor

Chancellor (and even a greater Power than our Constitution gives to the King himself) that upon his Letter with a Paper enclosed, and without other Evidence, a Man should be so turned out? For if one Man may be so turned out; why may not a Hundred or a Thousand be served after the same Manner? Or are we in *Ireland* to be treated as meer Slaves? For I dare venture to say that should any Judge, Sheriff, or other Officer, or Person in *Great Britain* (in a case where proof upon Oath has *always* been required) accept of a *Post Letter*, instead thereof, from any Person whatsoever, and thereupon proceeded to turn any Man out of his Possession; The *British Parliament* (who neither will make their fellow Subjects Slaves, nor be made so themselves) would soon upon the least complaint, make him understand that a *Post Letter* in such a Case has no Manner of *Legal Authority*; nor is it to be taken for Evidence, where the constantly received practice requires another sort of Proof.

IN the second Place; It is a Fundamental Rule, not only of Practice in this or that Court, but of *Law* also, and that in all Kingdoms and Commonwealths that are or ever were; That no Person or Persons, whether in a publick or private Capacity, have any Power to Act by Virtue of an Order which is no way *Directed* to them. He who pretends to Order a certain thing to be done, and gives no Manner of *Direction* who shall do it, does in effect, make no Order at all. For the very Nature of an Order implies a *Direction* (either in particular or at least in general terms) to some one to put it in Execution; which *Direction* alone is that which invests some certain Person or Persons with

Power to execute such Orders, which Power, without such Direction, cannot be given to him or them by any Order: and since the Direction of an Order is thus (as I may call it) the Channel which conveys and carries in it the Power, it must necessarily follow, that no Person can be invested with any Power to Execute an Order, except he be *some way or other included in the Direction*. For Example, if by my written Warrant, I empower any Attorney in any of his Majesty's Courts to appear for me and confess Judgment; every Attorney in all the Courts throughout the Kingdom is included in this general Direction. But if I grant a Warrant to John Jones Attorney in the Court of Common-Pleas, so to appear for me, in this Direction no other Attorney in that or any other Court, but he alone, is included, or consequently hereby empowered to appear for me.

THUS also, if any Writ, Injunction, or other Publick Order is specially Directed to any certain Officer or Court by Name, no other Court or Officer, who comes not within the Direction, can thereby have any Power conveyed to him or them, for the Executing such Writ, Injunction, or other Publick Order. I speak not here of what may be done in behalf of the King (of which I pretend to know nothing) But in all Civil Causes between Party and Party, either this Rule must hold, or else there will be an inlet to all Manner of Confusion. For where any Person is regularly Directed by a Superiour Authority to act; there he is bound to Act, and Punishable if he refuses. But where no Direction is given him, he certainly cannot be Punished for not acting: And a Power either to act, or not to act is plainly an Arbitrary Power, to which I am
 sure

sure our Laws give no manner of Countenance. And if once such a Power should be allowed and countenanced in any Courts or Officers; how easily may it be made use of to the aggrieving and oppressing of the People?

IF therefore a *Capias* or any other *Writ* be *Directed* to the Sheriff of any County, the Sheriff of another County to whom it is not *Directed*, has no Manner of Power to put the same in Execution. And if a *Certiorari*, for calling up the Records of a Cause, be *Directed* to the Court of any Corporation, no other Court to whom the same is not *Directed*, can Act by it; altho' there were a Cause also there depending, between the very same Parties. Or if, by Charter, the Power of holding Courts be given to the *Mayor* and *Recorder* of a Corporation jointly, and not to either of them severally, and such a *Certiorari* should be *Directed* to the *Mayor* without any Mention made of the *Recorder*; the *Writ* not being *Directed* to the Court, but only to a part of it, which is not the Court; The Court could have no Power to act by the same; But the proper return to be made, in such a Case, by the *Mayor* alone, would be, that no Court is held in this Corporation by the *Mayor*, but by the *Mayor* and *Recorder*; upon which return a new *Certiorari* may be taken out with the proper *Direction*. All which is so very plain, that I should be ashamed thus to dwell upon it; if some Mens unreasonableness did not make it necessary, to set this Matter in the fullest and clearest Light.

AND now to apply all this to the Case before us: The *Common Law* side, and the *Chancery* side of the *Exchequer* are two different Courts; one a Court

Court of *Law*, and the other of *Equity*. In the former, *the Lord Chief Baron, and other Barons of the Exchequer*, are the sole Judges; in the other, *the Chancellor, Treasurer, Lord Chief Baron, and other Barons*, are equally joyned in the Judicature: And altho' in the absence of the two former, the three latter may act in Causes of Equity, yet the Proceedings must be *in the Name of them all*. And if a Bill in Equity were directed to the *Lord Chief Baron, and other Barons*, without taking any notice of the *Chancellor or Treasurer*, such a Bill would not be directed to *the Court*, but only to a *part of it*; nor therefore could *the Court* regularly proceed upon it, until such erroneous Direction were amended. If then you please to consult the several Orders which have been made by the *British House of Lords* in the Cause between *Sherlock and Annesley*, you will find, that they are directed only to *the Barons of the Court of Exchequer in Ireland*; without the least mention (either in particular or in any general Terms) of the *Chancellor or Treasurer*. This Direction therefore, at the utmost, can only extend either to the *Common Law Court*, or else to but a *part of the Court of Equity*: And consequently, being *no direction to the Court of Equity*, can give that Court no Power to act. And yet notwithstanding all this, the *Lord Chief Baron and other Barons, acting as a Court of Equity*, and in the Name of the *Chancellor and Treasurer*, as well as of themselves, have taken upon them to put all these Orders in execution; which is most evidently to act without any Power given them by Law. And he who acts as Judge of a Court, where the Law gives him no Power, I think I may well say, *acts contrary to Law*; it being a most fundamental Law of every Civil Constitution, that

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no Man shall take upon him to act as Judge of a Court, any farther than the Law gives him Power so to do.

AND here I cannot but observe, that when the Lord Chief Baron was asked by the Committee of our House of Lords, why he and his Brethren would take upon them, as a Court of Equity, to act by Virtue of any Order, *not directed* in the usual Stile to the Court, but only to the *Barons of the Exchequer*; His Lordship's Answer was, *The British House of Lords is a great and powerful Body, and therefore not to be trifled with*. When the Question is asked a Judge (who by his Oath is obliged well and truly to execute his office) why *acting as a Judge* he does this or that Thing; I think there is but one *honest* Answer to be given, and that is, *because the Law gives his Power to do what he has done*. But instead of shewing that what was done, *was according to Law*, all I can gather from *this* Answer is, that he was unwilling to run the hazard of disobliging the *British Peers*; or rather was forward to do what (I know not how, he could then foresee) would so very much oblige them. If you can put a better Construction upon this Answer (which was all the Reason he gave for taking this *Direction* as sufficient) I beg you to do it, for I profess I cannot.

BUT you tell me, that altho' indeed there was a manifest *Error* in the *Direction* inserted in the several Orders of the *British Peers*; yet their Lordship's *intention* was plain enough: And as long as the Barons acted according to the manifest *intention* of the several Orders, it will be sufficient to justify them, notwithstanding this or any other Defect

Defect that might possibly be in the *Orders* themselves.

I Answer ; That when the intention of any *Publick Order* is not *sufficiently* and *legally expressed* in the words of it, such *Order* ought to be returned, and the Defect or Error of it assigned as a Reason why no Obedience could be given to it. And that this is what ought *in Law* to be done (I mean, whenever a *Return* is required and insisted upon) might easily be made appear, by Instances of all sorts. For example ; If a *Certiorari* be wrong directed, (as I have but now said) it cannot be obeyed ; but the *Return*, such as I have already mentioned it, must be made upon it. If a *Writ of Habere facias Seisinam*, or an *Injunction* out of Chancery be directed to the *Person* who is High Sheriff of a County. requiring him to give possession of Land ; and either the Name of the County, or of the Land, or of the person who is to have the possession be therein omitted, such *Writ* or *Injunction* is no sufficient Warrant to the Sheriff to give possession, however well he may be satisfied of what was *intended*. But the party concerned is to take care, at his own peril that a new *Writ* or *Injunction* be taken out without any such material Error or Defect in it. And that the same Rule will hold good concerning all *Writs*, *Injunctions*, *Decrees*, and *Orders*, which in Causes, between party and party (of which only I am now speaking) are taken out of any Court whatsoever, is so very plain to every Man who has but the least Knowledge of our Law, and the practice of the several Courts, that I need not offer farther proof of it. And upon this known Rule,

T H E

The third Thing which, in the Representation, is laid to the charge of the Barons, as *having acted contrary to Law*, will abundantly be made out; viz. That whereas in the several Orders of the British House of Peers, directed to the Barons of the Exchequer, as aforesaid, no name of any Land, or so much as of any County, is inserted or mention'd; But only it is ordered, *That the Barons do cause Maurice Annelly, Esq; to be forthwith restored to the Possession of the Lands of which he was dispossess'd, &c.*

The said Barons in the several *Injunctions* by them hereupon issued, have taken upon them to insert both the Names of certain Lands, and also of the County where they are supposed to lie; that is to say, Whereas the Orders of the British Peers were in a most material part *defective*; by reason whereof, it was according to Law, impossible (as they were worded) to put them in execution: the Barons, without any Law or Custom, or so much as one single Precedent, that I can hear of, for their so doing, took upon them to supply this Defect, and to issue their *Injunctions*; not according to the Orders of the Lords, *as sent to them*, but according to such *Amendment* or *Improvement* as they themselves thought fit to make in, or to them.

Let us suppose that the Barons had faithfully recited and kept close to the Words of the Lords Order, and in pursuance thereof, had directed their *Injunctions* to any Sheriff, requiring him forthwith to restore, or to *cause the said Maurice Annelly, Esq; forthwith to be restored to the Possession of the Land of which he was dispossessed, pending his Appeal* before the British house of Lords: I desire to know how it could have been possible for such high Sheriff,
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according to the Rules of our Law, to give obedience to an *Injunction* thus conceived and worded?

Is there any *Law* or *Custom* that would have warranted his calling a *Court of Inquiry*, or otherwise examining Witnesses, to find out, which were the particular Lands of which the said *Maurice Annesly* was so dispossessed, and his giving possession of them, when he had so found them out? Or if he had acted without *Law* or *Custom*, to warrant him, would not this have been a breach of his *Oath*? And might he not have been called to an *Account* for so acting? Either then you must shew me some *Law* or *Custom* whereby the Barons were impowered to proceed in the manner they did, for the finding out of the said Lands, and inserting the Names of them in their *Injunctions* (which I am pretty sure you will never be able to do) or else you must own that they have acted as contrary to *Law* in what they have done, as the Sheriff would have done, in case he had proceeded in the manner I have mentioned. Or if the Sheriff would have been obliged to have returned such an *Injunction*, and to have assigned the *Generality* and *Uncertainty* of it, as the Reason why he could give no Obedience to it; by the same Rule, the Barons were also obliged (both for this and other Reasons) to have made the like *Return* to the House of Lords. Nor would this (to use the Lord Chief Baron's phrase) have any more been *trifling with that great and powerful Body*, than it would have been *trifling with the Barons*, for the Sheriff to have made such a *Return* of their *Injunction* as I have but now mentioned. But the Barons (or one of them at least, who influenced the other two) seem to have had

had a View to somewhat else rather than to the Rules of Law, in the present case.

In the fourth Place; it is the constant Practice in all well regulated Courts of Justice, and particularly in ours, That in all Causes depending between Party and Party, no Judge should begin to *Moue* any thing in his own Court; but that every Decree, Order or Rule of Court ought ever to be made upon the *Motion* of some Lawyer, Attorney, or other person, by Law or Custom allow'd to make such *Motion*. The Business of a Judge in all such Cases being only to do Justice, where application is made for it; and then to have no regard but to the *Merits of the Cause*, without the least shew of Favour to the *Person* of one of the Litigants more than the other: However, perhaps he may apprehend, that the shewing such favour, may be a means of obliging or making his court to any *Great and Powerful Men, or Body of Men*, whatsoever. And therefore such Judge is not to run before he be call'd for, nor by the Practice of our courts, to make any Rule, Order, or Decree, until some *Motion* is made for it on the behalf of one of the contending Parties.

But the Barons, not regarding this constantly received Rule of Practice, thought fit, at several times, without any *Motion* made by Lawyer, Attorney, or other person, except some of themselves, to make Orders and Decrees for the dispossessing of *Sherlock*, and putting *Annesley* in Possession of the Lands in controverſie; only, in a new and unprecedented manner, producing their Post-Letters, and pretended (but *unproved*) *Copies of Orders in the Court*: And upon this Foundation alone, proceeding to dis-

dispossess one of the King's Subjects, and to give the Possession to another.

But you tell me, that the Barons were forced to proceed this way, because no Lawyer or Attorney would move in behalf of Mr. *Annesley*, against what had been decreed by the House of Lords in *Ireland*. *Forced*, say you? I pray, Who *forced* them? Did any one threaten them? Or is a Judge to be prevail'd upon by Threats (in case they had been so used) to act contrary to the received Rules and immemorial Practice of his own, and indeed of all other Courts? The first Order of the *British* Lords, directed, as I have already said, *not to the Chancery Court*, but barely to the *Barons of the Exchequer* (and this without inserting the Names either of *any Lands*, or so much as of *any County*) This first Order, I say, was given out on the sixth, and the Copy of it sent away by the Lord Chancellor on the eighth Day of *February*, 1717; and very probably might not come to their hands in eight, nine, or perhaps ten Days. Nor is there one word that looks like a *Threat*, either in the *Order* itself, or his Lordship's *Letter*, wherein it came enclosed: And on the nineteenth of the same Month, the Barons produce this *Letter* and *Copy* in Court, and the same Day, in pursuance of the Directions therein contained, and without any *Motion* made by Counsellor or Attorney, immediately make an Order for an *Injunction*. Now does this proceeding look as if they were *forced*? Or what necessity was there for all this Haste in a matter that certainly required some Deliberation? Suppose they had writ back to the Lord Chancellor of *Great Britain*, and desired him to apprise the House of Lords of the

the several Defects that were in this Order (as I have already mentioned them) by reason of which it was impossible for them, *according to the Rules of Law and Practice*, to give obedience to it, unless it were amended: Would this have been *trifling*? as the Lord Chief Baron termed it. And if the Order had been never so full, and rightly directed; yet, in a matter of such Consequence, might they not have paused a while, and taken some Days to deliberate and consult other Judges, who were *better* acquainted with the Constitution of this Kingdom, about it? Or, lastly, might they not (after all have acquainted Mr. *Annesly*, that if he would come and make an Affidavit in Court, that he could get no Council or Attorney to move in his Cause, they would give him leave to make his own Motion? But they had no mind to *trifle with a great and powerful Body*: And therefore, Away with your constantly receiv'd Rules of Practice, and out with the *Post-Letter*, and let us proceed. With the like prudent Deliberation and tender Caution, they also proceeded upon the Orders of the *British Peers*, dated *Jan. 23.* and sent away by the Lord Chancellor of *Great Britain*, *Jan. 27.* 1718: Upon which, on the forth of *February* following, they in the very same manner decreed another *Injunction*. But for this last Proceeding they are to be excused, because they had a *Precedent* (of their own making) for it.

But you will say, may not an old *Rule of Practice* be altered or laid aside, and a new one made by the Court? Yes, where there is good Reason for it, and it is done in a proper way. But where such a *Rule* is not merely arbitrary, but grounded

grounded upon Reason and Equity, and never has been altered or laid aside; for a Judge, *while a Cause is depending*, to depart from that Rule in favour of either Party, and to act by another Rule, which is neither agreeable to Reason or Equity, nor ever has been received or established, perhaps in any Court in the World; This, I say, is contrary to the Duty of his Station, and may be a precedent of dangerous Consequence. And surely I need not tell you, that both Reason and Equity require that a Judge should be altogether indifferent between both Parties, and therefore should not, at any time, begin to move in favour either of the one or the other; but be ready, as Application in a legal way is made to him, always to do what is just and right.

Fifthly, It is not so inconsiderable a thing as some would make it, that by the constant Practice of our Courts, no *Injunction* or *Writ* in a Cause between private Parties (for with the Causes of the Crown I now meddle not) should issue without the hand of a *Six Clerk* or *Attorney* thereunto put. It is next to impossible, that the Lord Chancellor, or other Judges, should distinctly read over and correct the Mistakes of every Instrument that passes the Seals of their respective Courts; and yet if Errors and Misnomers should creep into *Writs* and *Injunctions*, it must be very grievous to the Subjects, and occasion great Delay, Trouble, and Expence in Business; they who are to execute them having no power to judge of the *Intention* of them, but as it is legally and sufficiently expressed in each of them respectively. For which reason therefore such *Writ* or *Injunction* is to have the Name of the *Attorney*

ney or *Six Clerk* who is supposed to draw it, affixed to it; and who is to be answerable, at his peril, if it be not rightly drawn. But of this Rule also, no notice was taken by the Barons, in issuing the first of the abovementioned *Injunctions*, which had not the Hand of any Attorney to it.

There are divers other Rules of Law and Practice, the Breach of which was objected, and seemed to be proved before the Lords Committees, against the Barons. But because I have only a confused remembrance of them, and do not find them inserted in the *Representation*, I shall at present take no notice of them.

But there is one Rule more, and that a most fundamental one both of Law and Equity in all Civil Communities throughout the World, which the Barons have not only violated, but even made a mock of, as I find the matter set forth in the *Representation*.

The Rule is this, That when any Order or Rule of Court is grounded upon a *Written Affidavit*, such Order or Rule must extend no farther than what is sufficiently supported by the Words of such *Affidavit*: And therefore, if such *Affidavit*, as it stands upon the Paper, is plainly either false or defective in the material part of it, the Order or Rule cannot justly and regularly be made until the *Affidavit* be mended, the Falsity expunged, the Defect supplied, and the Words of it made strong enough to support what is to be built upon them. This, I say, is, and always ought to be, a fundamental Rule in all Courts of Justice, and carries its own light so clearly with it, that it would be trifling indeed to offer any farther Proof of, or Reason for it.

Now

Now here pray mark, that the *Order of the British Lords*, dated *Feb. 6, 1717*, runs in the following Words. *That the Barons of the Court of Exchequer in Ireland do cause the said Maurice Annesly, Esq; to be forthwith restored to the Possession of the Lands of which he was dispossessed pending his Appeal, &c.* According to which, an *Order of Court* was made *Feb. 19.*

In order to know the Names of those *Lands*, of which he (*viz. Maurice Annesly*) had been so dispossessed, the Lord Chief Baron admits *John Annesly* to make *Affidavit* before him; in which *Affidavit* it is neither expressed, nor so much as implied, that *Maurice Annesly* was dispossessed of any *Lands* whatsoever, either *pending the Appeal*, or at any other time. But the Case was thus: About two Years and a half before the *Appeal* was brought, the *Lands of Little Rath, Darr, and Bodingstown* had been sold to one *Mr. Wilson* and his Heirs for ever, and the *Lands of Mullenafooky* to one *Mrs Harman* and her Heirs for ever. *John Annesly* therefore could not safely swear that *Maurice* was dispossessed of these *Lands pending the Appeal*; because he knew that he had long before, of his own accord, yielded up the Possession of them to the several Persons to whom he had sold them. He therefore only swears that, *Pending the said Appeal, he the said John was dispossessed of the said Lands; which he the said John held by virtue of a Lease from the said Maurice Annesly; and that the said John's Lease was then in being, and undetermined.* It was not therefore *Maurice Annesly* that he swears to be dispossessed, but himself the said

said *John*, who, it seems, held the said Lands by a Lease thereof set to him by *Maurice*, before he had sold them: And yet upon this [insufficient] *Affidavit*, the Barons give out their *Injunction* for putting *Maurice Annesly* in Possession of the said Lands.

You will tell me perhaps, that if we keep close indeed to the Words of the Order of the *British* Lords, and compare them with those of the *Affidavit*, there will not appear to be a sufficient Foundation for this *Injunction*. But their Lordships *Intention* most certainly was, that Possession of the controverted Lands should be restored to whatever Person had been dispossessed of them: and that this was the Foundation upon which the Barons proceeded. For Answer to which, I need only refer you to what I have already said upon much the same Point. If they who issue forth an Order of any sort, in a Cause between party and party, do not *sufficiently* and *legally* express their *Intention* in the Words of it, the Order is not to be obey'd, but return'd, and a plainer and a fuller to be taken out: for our Law allows not an inferior Court or Officer to amend or supply the *Material Defects* of such Orders, as come to him or them from their Superiors.

It appears by the *Report* of our Lords Committees, that when this *Affidavit* of *John Annesly* was brought to the Chief Remembrancer's Office, both Mr. *Becher*, the Deputy Chief Remembrancer, and also Mr. *John Annesly* himself, who was then present, were fully informed of the insufficiency of the said *Affidavit*, and this before issuing of the *Injunction* for Possession

session. Nor can I imagine but that Mr. *Becher* took care to inform the Barons thereof; but, he being dead, before this matter was brought before the House of Lords, I do not take upon me to affirm it. And to me it is enough, that the *Affidavit* it self sufficiently demonstrates its own Insufficiency; for since *John Annesly* would not insert the Words of the *British* Lords Order in his *Affidavit* (*viz.* that *Maurice Annesly* had been dispossessed, nor any that were *tantamount*) the Barons could not but see that the Order, upon which they proceeded, was not pursued; except perhaps, to avoid trifling, they did not think fit to compare the Order and *Affidavit* together.

Another instance wherein the Barons not only *violated*, but even *despised* the Rule which I am now upon, you will find pretty largely set down in the *Report* of our Lords Committees.

May 7, 1718, *John Annesly* makes an *Affidavit* before Mr. *Baron St. Leger*, and on the 12th moves the Court upon an attested Copy thereof; the *Original* being filed, as usual, in the Chief Remembrancer's Office. In the Title of the *Affidavit* (and accordingly of the Copy) *Maurice Annesly* was made *Plaintiff*, and *Hester Sherlock*, *Defendant*; upon which Mr. *Draycot*, an Attorney, informing the Court that there was no such Cause there depending; the said *John Annesly* was by the Court directed to amend his *Affidavit*. So that, at this time, it seems the Barons were of Opinion, that an *Affidavit* with a material Error in it, would be no sufficient Warrant for them to proceed upon. The said *John Annesly*

nesly hereupon (without drawing over the *Affidavit* anew) only erases and alters the Name of *Plaintiff* and *Defendant* in the same Copy, and then, without any Alteration in the *Body* of the *Affidavit*, swears the same before Mr. Baron. *St. Leger*, and files it in the Chief Remembrancer's Office. When this new-mended *Affidavit* was again offered in the Court, Councillor *Dixon* informed them, that what was now sworn, could not possibly be true; for that the same things were now said of *Hester Sherlock*, who by altering the Title was made *Plaintiff*, as before was said of *Maurice Annesly*, who was named as *Plaintiff* in the Title of the *Affidavit*, as it before stood; and so *vice versa*, of *Maurice Annesly*. For Example; when *Maurice Annesly* was named as *Plaintiff*, *John Annesly* swore truly, that he had a *Letter of Attorney* from the *Plaintiff* to receive *Possession* of the *Lands*: But *Hester Sherlock* being now made *Plaintiff*, this, as it stood worded, was altogether false. Now one would think, that this being made so very plain, the Barons should have ordered Mr. *Annesly* (as they had before done) to rectifie the Errors of his *Affidavit*, and to leave no *Falsities*, at least none that were material in it; the *Truth* of this same *Affidavit* being the only *legal* and *warrantable* Foundation for what they were going to do. But when Men are fully resolved upon a thing before-hand, 'tis no great matter for *Truth* or *Falshood*. The Lord Chief Baron said it was only a *Mistake*; and upon this *Affidavit* (though they *knew it to be false*) they fined the Sheriff Forty Shillings, if he did not in four Days return their

Injunction. And this was the Foundation of all the Fines, which afterwards were again and again laid on him, until it came to the Sum of Seventy seven Pounds.

This Letter is grown to a much greater length than I at first either designed or thought : but having undertaken to shew that the Barons have *knowingly* and *wilfully* acted contrary to Law, and to the established Rules of Practice in the King's Courts, I thought it would be necessary to set every thing in a full and clear Light : which I think I have sufficiently done. And as for what remains to be said concerning any thing wherein they might not possibly have been fully informed, or may be supposed to have had some Doubt, I shall dispatch it in as few Words as possibly I can.

In the Distribution of Justice between Man and Man, and much more where the Rights of *two Kingdoms* are concerned, no Judge ought to come to a Determination in favour of either Party, until Matters are so cleared up, as *fully to convince* him, that he does no Wrong in such Determination. And in order to be thus *convinced* either on the one side or the other, he ought carefully to enquire into the proper Evidence on both Sides ; and if the Matter still continue doubtful, to consult others who are learned in the Law about it : And lastly, if it be a Case of great importance or consequence, to take as much time, and use as much deliberation as he can well justify, before he concludes upon any thing.

But did our Barons do any thing of all this?
Did

Did they consult, and fully search the *Rolls Office* and *Journals of Parliament of both Kingdoms* to see what Evidence there might be found concerning their respective supreme Judicatory Powers? Did they advise with their Brethren of the other Courts, or (it being a Cause in Equity) with the Lord High Chancellor about it? Especially considering that the Lord Chancellor and all the other Judges must needs be much longer and better acquainted with the Constitution of this Kingdom than any of *them* could well be; two of them having, until very lately, been utter Strangers to the whole Kingdom, and the third, not *very conversant* in the Courts, or Business of it, until he was made a Baron. Alas! alas! the Barons were determined *not to trifle with so great and powerful a Body as the British House of Lords*, for there lies the *Secret* of the whole matter; altho' perhaps the Lord Chief Baron a little too hastily blabbed it. And therefore they could not take time so much as to *deliberate* what was fit to be done; but, as soon as the *Pacquet* arrived, with all manner of expedition put their *Orders* in execution, as I have already told you. True it is, that there is a Passage in the *Holy Scripture*, which says to a Judge, *Thou shalt not respect the Person of the Poor; nor honour the Person of the MIGHTY*. But, are Bibles any more than *Records*, or other Judges, to be regarded or consulted with, when once Men are *resolved upon a matter*? However, we must needs own that that part of the Precept which relates to *POOR Ireland*, they seem to have very well remembered, tho' not rightly to have interpreted: But as for what re-

lates to the MIGHTY, I leave you to judge what a *conscientious* regard they paid to it. However, perhaps they might have *forgot*, that there was any such Command as this in the *Holy Scripture*; yet surely they could not but *remember* that they had by *Oath*, *expresly* bound themselves not only *well and truly* to execute their Office (which words most certainly imply *Justice, Equity, Impartiality, sufficient Enquiry and all due Consideration*) but also *that for Highbness nor for Riches — nor for the Estate of no manner of Person or Persons — they shall lett the King's Right, nor none other Person's Right they shall disturb, lett, or respite against the Laws of the Land.* To which if they had had the least Regard, surely they would have been ashamed to own, that the *Greatness or Power of any Person or Persons* whatever, had the least Influence upon them in these their *precipitate* and illegal Proceedings.

In the *Oath* of every Baron of the Exchequer, there are also these Words: *And whereas ye may know any Wrong or Prejudice to be done to the King, ye shall put and do all your Diligence that to redress. And if ye may not do it, ye shall tell it to the King, or to them of his Council, which may make relation to the King, if ye may not come to him, to the King's Majesty's Lieutenant, or other Chief Governour or Governours of this Realm for the time being.* If then during the whole time of this Controversy between the Lords of Great Britain and those of Ireland, You had been one of these Barons; lay your Hand upon your Heart, and tell me what you would have done. Would You have gone on in the same Steps

Steps, and with the same Expedition as They have done? And would the *Greatness* or *Power* of any Man or Men whatever, or any thing besides *LAW, Equity, and known Practice*, have influenced you in your Proceeding? More particularly, with respect to the Words of the *Barons Oath* last mentioned; the House of Lords in *Ireland* have again and again expressly owned and recognized (both by Act of Parliament and otherwise) the perpetual Dependance of this Kingdom upon the Crown of *England*, and now of *Great Britain*. In all their Proceedings they constantly assert, that they act by the *King's Authority*, and that every Cause brought before them is, in Construction of Law, *before the King in his Parliament*, and that it is a *Prerogative of the Crown* thus to have the power of judging of Causes. Would you then (especially after having taken this express Oath) have concurred, *in the manner as they have done*, in depriving the King of this power? Would you not have taken long time to consult and deliberate upon a matter of this Importance? Would you not have consulted both the *Records* and your Brethren the other Judges, *very fully* about it? And before you had come to a final Determination, would you not have laid the whole before the *Chief Governour and Council*; for fear lest, for want of sufficient Inquiry, you might otherwise have done *Wrong or Prejudice to the King*, as well as Kingdom, and thereby have broken the Oath you had so expressly taken? And if you would have done all this, as I am sure you would; what Excuse can you make for your Friends the *Barons*,

rons, that not one of all these Steps were taken by them? Nay so far from it, that if the Lord Chief Baron had any Meaning at all in that remarkable Word *Trifling*, he and his Brethren, if they had done all, or any of these things before they gave Obedience to the *Orders* of the *British* Lords, must, in his Sense, have been no better than *Triflers*.

It is in my Opinion no small Aggravation of what the *Lord Chief Baron* particularly has done, that he knows very well with what great *Tenderness* to him, the House of Lords here had formerly acted, for which how well he has requited them, I leave you and all Mankind to judge. But nothing of this being proper to have been mention'd in the *Representation*, I shall therefore say no more of it, but conclude.

Your, &c.

POSTSCRIPT.

FOR the Truth of all the Facts which I have here set forth, I refer you either to the *Report* of the Lords Committees or the *Representation* of the Lords of Ireland, both printed: Or to the Testimony of all who were present at the whole Transaction. 6 DE 58

F I N I S.